HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Appal No. 1415 of 2001
(Old No. 1011 of 1996)

Jai Ram & another … Appellants

Versus

State of U.P. …Opposite Party

Approved for reporting.

_____

Not approved for reporting.

Date of Decision 21st December, 2005.

Initial of Judge.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Appeal No. 1415 of 2001
(Old No. 1011 of 1996)

1. Jai Ram S/o Jhinkan Yadav
2. Ram Daban S/o Tirath Dheemar
Both are residents of Khurapiya
Police Station Kichha
District Nainital,
Now District Udham Singh Nagar … Appellants

Versus

State of U.P. …Opposite Party

Sri I.S. Mehra, learned counsel for the appellants.
Sri D.K. Sharma, learned G.A. counsel for the State.

Hon'ble B.C.Kandpal, J.

1. This criminal appeal arises out against the judgment and order dated 31.05.96 passed by IInd Additional Sessions Judge, Nainital in Sessions Trial No. 373 of 1994, convicting the accused/appellants under Sections 352, 506 (1) I.P.C. and Section 3 (1) (xi) of the S.C. & S.T. (Prevention of atrocities) Act and sentencing them to undergo one year Rigorous Imprisonment each.

2. Brief facts of the prosecution case are that a First Information Report was lodged at Police Station Kichha by Savitri. As per the F.I.R. the incident took place on 24.06.1993 at about 8:00 – 9:00 p.m. Savitri W/o Nand Lal, Villae Khurpiya, Thana Kichha was granted land by the *Divisional Officer* for residential purpose on lease. On 24.06.1993, at about 9:00 p.m. both the appellants in drunken state came to her house where she lived along with her children and threatened her to vacate that land immediately as the same belongs to them. On this, Savitri opposed this act of the appellants and the appellants took out knife in order to kill Savitri. Thereafter, Savitri raised alarm, on this both the appellants fled

away from the place of occurrence. Before leaving the place of occurrence, both the appellants abused her and threatened her to leave that place. On the written report, police registered the case against the appellants under Sections 352, 506 (1) I.P.C. and Section 3 (1) (xi) of the S.C. & S.T. (Prevention of atrocities) Act.

3. On the basis of the written report lodged by Savitri (Victim), the case was registered under Sections 352, 506 (1) I.P.C. and Section 3 (1) (xi) of the S.C. and S.T. (Prevention of atrocities) Act. The investigation of the case was entrusted of Jawala Prasad (P.W.3) – S.I. of the police station concerned. On 27.07.1993, the chargesheet has been submitted against the appellants, namely, Jai Ram and Ram Daman.

4. After submission of the chargesheet the accused were committed to the Court of Sessions and the learned IInd Additional Sessions Judge, Nainital on 14.02.1995 framed the charges under Sections 352, 502 (1) I.P.C. and Section 3 (1) (xi) of the S.C. & S.T. (Prevention of atrocities) Act against and appellants. The accused denied of the charges levelled against them and claimed their trial.

5. The prosecution in order to support its case produced Savitri (P.W.1), Ram Prasad (P.W.2) and Jwala Prasad Shukla (P.W.3) – S.I.

6. After the evidence of the prosecution was over, the statements of the accused/appellants were recorded under Section 313 of the Criminal Procedure Code. The accused persons did not adduce any evidence in their defence.

7. The learned trial court, after hearing learned counsel for the parties and having perused the entire evidence on record, found both the appellants guilty and convicted them under Sections 352, 506 (1) I.P.C.

and Section 3 (1) (xi) of the S.C. & S.T. (Prevention of atrocities) Act and sentencing them to undergo one year Rigorous Imprisonment each vide judgment and order dated 31.05.1996.

8. Feeling aggrieved by the impugned judgment and order, the appellants preferred the appeal before the Allahabad High Court, which has been transferred to this court after creation of new State of Uttaranchal.

9. I have heard the learned counsel for the parties and perused the record.

10. The prosecution has produced three witnesses in order to bring the guilt of the appellants to home. Savitri (P.W.1) W/o Nandlal who is complainant of this case and is the victim. She has stated in her deposition that the land, on which she has put her hut, has been obtained by her by way of a lease by the Government. She has also deposed that the accused/appellants claimed that land of their own and wanted to evict the complainant from that land. She has further deposed that only on account of the same, the accused/appellants came to the place of the complainant and threatened her with dire consequences with the help of a knife as well as abused her with the words casting her caste. The complainant in her deposition has deposed that:-

> *"मुलजिमान हाजिर अदालत दारू पीकर मेरी झोपडी में आये और कहा कि यह झोपडी तुन्त खाली कर दो नही ंतो जान से मार देंगे और मुझे गाली दी कि चमार सालों भाग जाओ नही ंतो झोपडी में आग लगा देंगे। मुलजिमान ने चाकू निकाल कर जान से मारने की धमकी दी।"*

11. Apart of the statement of the complainant, the cross examination of this witness shows that the accused/appellants had come with the case that the accused – Jai Ram is a class IV employee in *Keshar Unch Prarthmik Vidhyalaya, Khurpia, Krishi Farm* and the land in

question has been given to him by the owner of the *Krishi Farm.* This type of suggestion given by the accused/appellants to the complainant clearly shows that the accused/appellants had an intention to remove the complainant from the land in question. Further, the deposition of the complainant shows that the accused/appellants had again put a suggestion that the complainant had instituted a wrong case against the accused/appellants with intent to grab the land in question belonging to the accused/appellants. This suggestion again shows that the accused/appellants had a clear motive to evict the complainant from the land in question.

12. The accused/appellants have not come with the case that the land in question had not been allotted to the complainant by way of *Patta* in her favour. The complainant has come with a case that the land in question was given to her by way of *Patta.* There is no reason to disbelieve this fact, that the complainant is in a possession over the land in question by way of lease in her favour.

13. Ram Prasad (P.W.2) is the *Gram Pradhan* and he has also supported the case of the prosecution. He has stated that the accused/appellants had abused Savitri in his presence. He has stated in his deposition that the accused/appellants have said following words to the victim:-

> *"चमार सालों का दिमाग ऊँचे हो गये हैं, जमीन छोड़ दो नही तो घर में आग लगा देंगे, मुलजिमान ने चाकू भी निकाले थे।"*

There is nothing on the record, which may suggest that P.W.2 was either telling lie or has any other motive to falsely implicate the accused/appellants.

14. Learned counsel for the appellants has further argued that there is delay of one day in lodging the First Information Report and this

delay shows that the First Information Report was subsequently lodged against the accused/appellants after deliberations. It has also been stated that the prosecution has not given any satisfactory explanation with regard to this delay.

15. I fail to appreciate this argument. It is clear from the record that the husband of the complainant is a *Rickshaw Puller* and when he came to his house on the next day he took his wife to the police station along with the *Gram Pradhan* – Ram Prashad (P.W.2) and lodged the report. Therefore, this delay in my opinion does not create any doubt in the prosecution case.

16. As far as the occurrence with regard to this aspect that the accused/appellants came at the premises of the complainant and committed the offence of criminal intimidation is concerned that stands proved on the basis of the evidence adduced by the prosecution beyond reasonable doubt. But so far as the offence under Section 3 (1) (xi) of the S.C. & S.T. (Prevention of atrocities) Act is concerned, I don't think that the evidence available on record makes out a case with regard to this aspect that the accused/appellants, in fact assaulted or used force to the complainant belonging to Schedule Caste with intent to dishonour or outrage her modesty.

17. There is no iota of evidence available on record that the accused/appellants had in fact tried to dishonour or outrage the modesty of the complainant. I am, therefore of the view that the charge levelled against the accused/appellants under Section 3 (1) (xi) of the S.C. & S.T. (Prevention of atrocities) Act could not be established by the prosecution beyond reasonable doubt.

18. On the basis of the assessment of the evidence on record, I come to the conclusion that the prosecution has successfully proved the

guilt of the accused/appellants beyond reasonable doubt with regard to the charges levelled against them under Sections 352, 506 (1) I.P.C. However, the charge levelled against the accused/appellants under Section 3 (1) (xi) of the S.C. & S.T. (Prevention of atrocities) Act has not been established beyond reasonable doubt.

19. In the result, the appeal is thus partly allowed. Judgment and order dated 31.05.1996 passed by learned IInd Additional and Sessions Judge is modified up to the extent that the appellants are held guilty for committing the offence under Sections 352, 506 (1) I.P.C. The appellants are further acquitted of the charge levelled against them under Section 3 (1) (xi) of the S.C. & S.T. (Prevention of atrocities) Act.

20. As far as the sentence imposed against the appellants is concerned, I am of the view that this case is about 12 years old. Therefore, I do not find any justification to send the accused/appellants to jail again for the offence under which they have been found guilty.

21. I direct that the accused/appellants be fined to the tune of Rs. 500/- each for committing the offence under Section 352 I.P.C. Further, the appellants are also fined Rs. 1000/- each for having committed the offence under Section 506 (1) I.P.C. instead of sentence imposed against them for one year each by the trial court.

22. Accordingly, the appeal is partly allowed.

23. The record of the court below be sent immediately, so that the direction issued passed by this Court be carried out promptly by the court concerned.

(B.C. Kandpal, J.)

December 21, 2005
ASWAL